IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	
JAMES RICHARD MITCHELL, and	§	
JACKIE ANICE MITCHELL,	§	
Debtors.	§	CASE NO. 02-42806-DML-7
	§	
THE CADLE COMPANY,	§	
Plaintiff,	§	
	§	
vs.	§	ADV. NO. 02-04199
	§	
JAMES RICHARD MITCHELL, and	§	
JACKIE ANICE MITCHELL,	§	
Defendants.	§	

MEMORANDUM OPINION

In this adversary proceeding The Cadle Co. ("Cadle" or "Plaintiff") asks the court to deny pursuant to 11 U.S.C. § 727(a)(3), (4)(A), and (5) the discharge of chapter 7 debtors James Richard Mitchell ("Mr. Mitchell") and Jackie Anice Mitchell ("Mrs. Mitchell"; and together with "Mr. Mitchell", the "Mitchells" or "Defendants"). Defendants have counterclaimed against Cadle on the theory the adversary proceeding was brought for the purpose of harassing them.

The court tried this adversary proceeding on January 10, 2003. At that time the court heard testimony from Mr. Mitchell, Mrs. Mitchell, Ronnie K. Mumford ("Mumford"), Pam Rhoten ("Rhoten"), Cindy Vaszauskas ("Vaszauskas"), Becky Hanley ("Hanley") and Cary Ebert ("Ebert"). Mumford and Hanley were offered by, respectively, Plaintiff and Defendants as experts in real estate valuation. Rhoten and Vaszauskas are employees of TexasBank

Weatherford (the "Bank"), holder of the deed of trust on the Mitchells' home. Ebert is the chapter 7 bankruptcy trustee in the Mitchells' bankruptcy case.

The court also has before it numerous exhibits filed by the parties and admitted into evidence by stipulation. The parties argued to the court at the conclusion of the trial and submitted post-trial letter briefs. Plaintiff also submitted a pretrial brief.

This adversary proceeding is subject to the court's core jurisdiction pursuant to 28 U.S.C. §§1334(a) and 157(b)(2)(J). This memorandum opinion constitutes the court's findings of fact and conclusions of law. FED. R. BANKR. P. 7052.

I. Background

More than a decade ago Cadle apparently acquired ownership of a note on which the Mitchells were obligated. Unable to collect the note through other means, Cadle brought suit against the Mitchells in the 236th Judicial District Court of Tarrant County (the "State Court") in December 2000.[1] The Mitchells counterclaimed against Cadle in the suit.[2] By April 2002, Cadle had filed a motion for summary judgment, which was set by the State Court for hearing in the same month. Apparently to preclude the summary judgment hearing, the Mitchells filed for relief under chapter 7 of the Bankruptcy Code (the "Code") on April 16, 2002. Subsequently Ebert was appointed as chapter 7 trustee in their case.

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1 The court was not provided with a copy of the note, the complaint or other evidence that would better explain Cadle's claim against the Mitchells. The court has not reviewed Cadle's proof of claim.

2 Though the counterclaim was often referred to at trial, the court was not provided a copy of it, and none of the testimony concerning the counterclaim described its contents.

From the first, Cadle took an active role in the chapter 7 case. Counsel for Cadle participated in the Mitchells' meeting of creditors held pursuant to section 341 of the Code. Cadle objected to the Mitchells' claim of exempt property.[3] Cadle deposed both Mr. Mitchell and Mrs. Mitchell and, on July 23, 2002, Cadle filed its complaint commencing this adversary proceeding. Defendants moved to dismiss the complaint as untimely. The court denied that motion and Defendants thereafter answered and counterclaimed.

II. Discussion: Complaint

A. Section 727(a)(3)

In its original complaint, Plaintiff alleges Defendants' discharge should be denied under section 727(a)(3) of the Code[4] because they "have concealed and refused to disclose documentation from which [their] financial condition might be ascertained." Complaint, ¶ 10. In its pretrial brief, Plaintiff argued that Defendants failed to provide records accounting for changes in value of their property or records accounting for "the majority of her [sic] financial dealings [which] consist[ed] of cash transactions."

At trial, Plaintiff failed to show by a preponderance of the evidence that Defendants did not keep adequate records or destroyed or concealed records. From the evidence before it, the

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[3] The court considered the objection to claimed exemptions on September 3, 2002. Though the record of that hearing is not in evidence before the court, the parties, in questioning witnesses and in argument, referred to those prior proceedings.

[4] Section 727(a)(3) of the Code provides:

> (a) The court shall grant the discharge of a debtor unless. . .
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> (3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case . . ..

court finds that Defendants maintained financial records of the type ordinarily kept by consumer debtors. The court further finds that the record does not support the conclusion that most of Defendants' financial transactions were cash transactions (see Plaintiff's Exhibit 12; Mr. Mitchell's testimony). The court therefore concludes that judgment should enter in Defendants' favor on the question of whether their discharge should be denied under section 727(a)(3) of the Code.

B. Section 727(a)(5)

Largely on the same bases as the allegations supporting its section 727(a)(3) objection, Plaintiff asserts pursuant to section 727(a)(5)[5] of the Code that Defendants have failed to explain the loss in value of their assets and their inability to meet their liabilities. Complaint, ¶ 10. Plaintiff has also failed to support this claim by a preponderance of the evidence. Plaintiff's contention that Defendants' discharge should be denied pursuant to section 727(a)(5) depends upon a variance in values of personalty between Defendants' schedules and a prior financial statement. At trial, however, Plaintiff did not show that any material assets of Defendants disappeared prior to bankruptcy. *See* 6 COLLIER ON BANKRUPTCY ¶727.08 (15th ed. 2002) ("[P]laintiff must identify particular assets which have been lost."). Accordingly, judgment

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[5] Section 727(a)(5) provides:

> (a) The court shall grant the debtor a discharge unless. . .
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> (5) the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities . . ..

should enter in favor of Defendants on the question of whether their discharge should be denied under 727(a)(5) of the Code.

C. Section 727(a)(4)(A)

The central objection asserted by Plaintiff to Defendants' discharge invokes section 727(a)(4)(A) of the Code. Under section 727(a)(4)(A), a debtor's discharge will be denied if "the debtor knowingly and fraudulently, in or in connection with the case . . . made false oath or account . . . ." In order to satisfy the requirements of section 727(a)(4), the objecting party has the burden of showing that (1) the debtor made a statement under oath; (2) that the statement was false; (3) that the debtor knew the statement was false; (4) that the statement was made with fraudulent intent; and (5) that the statement related materially to the bankruptcy case. *Beaubouef v. Beaubouef*, 966 F.2d 174, 178 (5th Cir. 1992); *Sholdra v. Chilmark Financial LLP*, 249 F.3d 380, 382 (5th Cir. 2001). The first two elements are met if the schedules or statement of financial affairs filed by the debtor pursuant to section 521(1) of the Code include a false statement or material information is omitted from them. *Beaubouef*, 966 F.2d at 178; *McClendon v. DeVoll*, 266 B.R. 81 (Bankr. N.D. Tex. 2001). The fourth element may be satisfied either by a showing of actual intent or a reckless disregard for the truth. *Sholdra*, 249 F.3d at 383. The element of "materiality" requires only a showing that the false statement or omission "'bears a relationship to debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of . . . property.'" *Congress Talcott Corp. v. Sicari*, 187 B.R. 861, 882 (Bankr. S.D.N.Y. 1994), quoting *Williams v. Fireman's Fund Insurance Co.*, 828 F.2d 249, 251 (4th Cir. 1987). *See also Chalik v. Moorfield*, 748 F.2d 616, 618 (11th Cir. 1984). It is not relevant whether the misstatement or omission

involves property which itself is not of material value; rather the inquiry runs to whether the schedules and statement of financial affairs are rendered insufficient for the trustee and the creditors to understand clearly all aspects of the debtor's business and estate.

As to showing that the debtor knew of the omission or falseness of the statement, proof is not necessarily required that the debtor consciously chose to omit or misstate information. It need only be shown that the debtor knew the truth when the omission or incorrect statement was made. On the other hand, if misinformation is corrected promptly by amendment to the schedules and statement of financial affairs once the mistake is discovered, this may suggest to the trier of fact that it resulted from the debtor's innocent mistake. *Cf. Beaubouef*, 966 F.2d at 178 (debtor failed to amend schedules until six months after omissions identified during his examination pursuant to FED. R. BANKR. P. 2004).

In the case at bar, Plaintiff alleged in its complaint that Defendants' schedules and statement of financial affairs were deficient in that they understated the value of their homestead in order to reserve a greater portion of the exemption available under section 522(d)(5) of the Code for otherwise nonexempt property; and that Defendants also understated the value of other personal property subject to exemption. In its pretrial brief, Plaintiff further argued that Defendants failed to disclose in their schedules (1) certain tools (in particular an air compressor); (2) the cash surrender value of an insurance policy; (3) correct statements of income of both Mr.

Mitchell and Mrs. Mitchell on their Schedule I; and (4) a counterclaim asserted in Cadle's suit against them.[6]

Turning first to Defendants' homestead, the Mitchells listed it in their schedules at a value of $235,000. Defendants obtained that value by requesting a broker to perform a market analysis of the value of the property on the eve of their bankruptcy filing.[7] Plaintiff argues that the Mitchells should have used the appraisal used by the Bank in connection with the November 2001 permanent loan extended to the Mitchells on their home.

At the hearing on Cadle's objection to the Mitchells' exemptions, the court found the value of the Mitchell's homestead to be $245,000, though only for purposes of that hearing. The evidence presented at the trial in this adversary proceeding was not significantly different from that at the prior hearing. Plaintiff presented the testimony of Mumford, a certified residential

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6 Since Defendants did not object at trial to the expansion of Plaintiff's case, the court will consider all the allegations. *See* FED R. BANKR. P. 7015(b); *See also,* Beauboef, 96 F.2d at 177; *In re* Perez, 954 F.2d 1026, 1027 (5th Cir. 1992); Yaquinto v. Greer, 81 B.R. 870, 875-76 (N.D. Tex. 1988). Plaintiff raised other omissions at trial (e.g., a set of dishes held by Mrs. Mitchell for her son). The court finds these other omissions both excusable and not material.

7 Defendants adjusted the number given them by the broker (with his knowledge) to fit their house's actual square footage.

appraiser, in support of his appraisals.[8] Defendants offered the testimony of Hanley, a real estate broker intimately familiar with properties in the neighborhood of the homestead.[9]

The court finds that the value of $235,000 stated by the Mitchells in their schedules was reasonable for the property. The Mitchells, under questioning by Cadle's counsel, testified they did not recall the offer to them of an updated appraisal in connection with the closing of the permanent loan and did not remember (or consider responsive) the 2000 appraisal. Though Cadle suggests it is not credible that the Mitchells forgot the appraisal they were provided in 2000 or the offer of the 2001 update, the court finds that their testimony was credible. At the time of the 2000 appraisal and at the time of the permanent loan, the Mitchells very likely did not

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[8] Mumford appraised the Mitchells' house for the Bank at $260,000, both in connection with permanent financing and to support a construction loan by the Bank to the Mitchells in the Fall of 2000.

[9] Plaintiff argued to the court that Hanley placed a higher value on the house than $235,000. Plaintiff disputed the court's recollection that the higher (approximately $250,000) valuation was not, according to Hanley, applicable equally to the time of the bankruptcy filing. Hanley's testimony concerning the value of the house at the time of filing (transcribed in chambers from a tape of the trial) follows:

> Q. (by Mr. Vida) Let's go ahead and take the timeline at current. What is the market in that area. . .for that property. . .for property similar to 3713?
> A. Okay. Yesterday I went back and pulled solds for about the last 6-7 months and I came up with three.
> Q. Okay. And what kind of a price range did these three come up with?
> A. Anywhere from 93 to. . .I think 104.
> Q. Okay. Is that a square foot price?
> A. Yes sir.
> Q. And how did you come up with those numbers?
> A. I did a search for the specific area, which would be Lake Hills Estates. And I used a price range of the minimums and approximately. . .not the actual maximums, because there are a few over three hundred. . .but I used a 210 to 275 range. And I tried to pull in the last 6-7 months to get something, you know, as current as I could. And comparable size. . .basically everything in that whole subdivision is in that price range. There are a few outside that 275 market but typically they're 220 to 260 or 270 range.
> Q. Now, going back to April 16, 2002 or thereabouts. . .Were the prices much different than they are today?
> A. I don't have that in front of me. . .I don't remember what they were then.

foresee their future need for an appraisal on their home and might reasonably have paid little attention to what was simply one of the Bank's requirement for financing.

Further the court did not find that Mumford's certification as an appraiser inherently made him a more credible expert than an experienced broker. Finally, the $235,000 value was obtained through a reasonable method. A debtor's selection of a reasonably obtained value for inclusion in schedules cannot constitute a false statement under oath, at least on this record. Valuation is not a science (as Mumford admitted). The $235,000 is not only a reasonable value, it is not so far out of line with other estimates of value to be "untrue."

Turning next to the statements of income on Schedule I, again the issue is one of which "fact" should be included in the schedules. The problem arises because Mr. Mitchell (an auto salesman) and Mrs. Mitchell (a contract licensed vocational nurse) both have variable incomes. Plaintiff takes the position that Mr. Mitchell and Mrs. Mitchell should have used their average wages as their "[c]urrent monthly gross wages" for Schedule I. Defendants instead used their most recent monthly incomes (*See* Defendants' Exhibits 2, 4 and 5). The court finds that the latter is a fair and truthful response to the inquiry posed by the schedules. Besides, the answer to question #1 on Defendants' statement of financial affairs provides income figures from which average income could be easily deduced.[10] That disclosure of these amounts was made in the original statement of affairs cures any deficiency in Schedule I (the schedules and statement of financial affairs are in the record as Plaintiff's Exhibit 1).

[10] There was an error in the calculation of one of the figures given in answer to question 1.

Similarly, Plaintiff's argument that failure to mention the Mitchells' counterclaim in the suit against them is an omission sufficient to taint the schedules must fail. The suit itself is disclosed both in Schedule F and in answer to question 4 on the statement of financial affairs. The court finds that this disclosure is sufficient to encompass the counterclaim—a conclusion supported by Ebert's testimony. Moreover, without knowing the nature of the counterclaim, it is impossible for the court to determine that a failure to disclose it was material. The Mitchells' explanation that the counterclaim was not disclosed through innocent error is credible, and the court accepts it.

As to the non-disclosed tools and cash surrender value of the insurance policy, the court is presented with a more difficult decision. It is clear that these items were omitted from the schedules, that the Mitchells knew of, at least, the tools at the time their schedules were prepared and that, even though the items were of little value and were exempted, the omission was material within the standards set by controlling precedent.

This leaves only the element of fraudulent intent to be addressed to determine whether Defendants' discharge should be barred under section 727(a)(4)(A) for omitting the tools and insurance cash surrender value. In its effort to show fraudulent intent, Plaintiff argues that Defendants have been guilty of a pattern of deceit from which the court should infer at least a reckless disregard for the truth. As evidence, besides the value of Defendants' house, the statements of income and the omission of the counterclaim from the schedules, Plaintiff cites, first, Defendants' failure to cure the omission of the tools and insurance from their schedules until after the omissions were identified as a result of discovery by Cadle.

However, the evidence shows that the omission of insurance cash surrender value was

discovered by Mrs. Mitchell and cured without prompting by Cadle. As to the tools, they were not concealed from Cadle or Ebert. Had Mr. Mitchell intended to conceal them, he could have lied about all but the air compressor.[11] Since the tools were kept in a garage shared with another individual, it is unlikely the inspector sent by Cadle would have identified them as belonging to Mr. Mitchell but for Mr. Mitchell's identification of his property. The court also finds credible Defendants' explanation that they simply overlooked the tools and the need to list them in the schedules. The possible exception is the air compressor, bought shortly before bankruptcy.

If Plaintiff's evidence of a pattern of deceit held water, the court might take a different view of the omission of the tools from the schedules. But Cadle relies additionally only on misstatements in a loan application provided to the Bank by the Mitchells and the failure of the Mitchells to review their schedules carefully before signing them to show reckless disregard for the truth. Upon close examination, Cadle's interpretation of the evidence does not hold up. Taking the loan application (Plaintiff's Exhibit 5A) first, Plaintiff points to several apparently incorrect statements. The loan application overvalues the Mitchells' cars and household goods and furnishings. It states the Mitchells have no suits pending against them and have cosigned no notes. All of these statements were untrue as of the date of the Mitchells' execution of Exhibit 5A.

On the other hand, the Mitchells testified they had no specific recollection of executing Exhibit 5A. Exhibit 5A was one of many papers signed by the Mitchells upon the closing of permanent financing on their home. The court finds it credible (albeit careless) that the Mitchells executed Exhibit 5A without reviewing its contents.

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[11] Cadle had access to documents showing the purchase of the air compressor.

As to the misstatements in Exhibit 5A, at least some may have come from Exhibit 5B, the original loan application prepared in Mrs. Mitchell's handwriting in Fall 2000 in connection with the construction loan advanced by the Bank to build the Mitchells' house. Though counsel for Cadle questioned the court's recollection of the testimony, Rhoten testified that some of the information on Exhibit 5A would have been taken from Exhibit 5B.[12]

Exhibit 5B shows no value for the Mitchells' vehicles[13] and (correctly, since it antedated commencement by Cadle of its state court litigation) no pending law suits. The Mitchells' household furnishings are not mentioned at all. As Rhoten testified Exhibit 5A was prepared from Exhibit 5B, updated as required by the investor, some of the "mistakes" in Exhibit 5A may

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[12] The following (transcribed in chambers) is from the tape of that trial:

Q. (by Mr. Emerson) Where do you presently work?
A. TexasBank.
Q. How long have you been working there?
A. Thirteen years in February.
Q. How would you describe. . .what is your title?
A. My title is Vice President mortgage lending.
Q. What is your job function?
A. It is to originate mortgage loans.
Q. Plaintiff's Exhibit 5A, do you recognize that document?
A. Yes.
Q. Would you have participated in the preparation of this document?
A. Yes.
Q. Can you please tell me how. . . from looking at the document, can you or can you not tell me how the information would have been accumulated for purposes of completing the document?
A. The final loan application is. . .that's this final loan application. . .the information is obtained from the original application as well as updated information from the borrower.
Q. What information would come off of the original loan application? Generally speaking?
A. We would update information as required by the investor, and other information would come from the original loan application.

In later testimony, Rhoten identified Plaintiff's Exhibit 5B as the original loan application.

[13] Plaintiff raised the varying value of Mr. Mitchell's pension plans as listed in various documents. The court is satisfied that all plans were listed in the schedules and the explanation offered for variations in value was satisfactory.

be attributed to carry-over from the earlier form. As to how Exhibit 5A came to include overvaluations of the Mitchells' vehicles[14] and other personalty, the testimony of Rhoten, Vaszauskas and the Mitchells was not consistent. It certainly was not sufficient for the court to find Plaintiff has *prima facie* established a pattern of deceit on the part of Defendants upon which the court could base a finding that the omissions in the schedules were prepared with a reckless disregard for the truth.

Neither has such a pattern been shown by the Mitchells' testimony that they did not carefully review their schedules before signing. Mrs. Mitchell testified, in fact, that she might not have reviewed the schedules and statement of financial affairs line-by-line.[15] The Mitchells' schedules and statement of financial affairs were the product of a form given them by their counsel (four of the 46 pages of the form constitute Plaintiff's Exhibit 4). The testimony of both Mr. Mitchell and Mrs. Mitchell was that they spent considerable time and effort completing that form, going so far as to obtain values for some items from pawn brokers. It would not be

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[14] The value assigned to one of the vehicles in Exhibit 5A approximates its original cost to the Mitchells. See Defendants' Exhibit 1. The court infers that purchase price was the origin of the value information concerning the vehicles.

[15] Once more, counsel for Plaintiff contested during argument the court's recollection of Mrs. Mitchell's testimony. The relevant portion of that testimony (transcribed in chambers) follows:

> Q. (by Mr. Emerson) Did you read your financial statements. . .or did you read the bankruptcy schedules before you signed them?
> A. Yes.
> Q. And you read statements of financial affairs before you signed them? Which goes with the bankruptcy schedules.
> A. I assume I did.
> Q. You assume you did? You don't know whether you did?
> A. I'd have to look at it. . .to see if I read every line.
> Q. You don't know if you read every line?
> A. I'm not sure.

unreasonable for them to assume their counsel would accurately transpose information from the form to the schedules. While such an assumption may not excuse more careful review of the actual schedules and statement of financial affairs, it certainly contradicts the assertion that Defendants, through cursory review of the schedules, were guilty of reckless disregard of the truth.

In sum, Plaintiff has failed to carry its burden. The cases it cites—typically taking language out of context—in support of its position are not comparable to the case at bar. *Sholdra* involved a debtor's default in response to a motion for summary judgment. The issue before the Court of Appeals was whether, in spite of the default, there was an issue of material fact. *Sholdra*, 249 F.3d at 383. In *Beaubouef* there were extensive, significant misstatements by the debtor concerning his business assets and affairs. *Beaubouef*, 966 F. 2d at 178. Moreover, unlike the case at bar, the debtor in *Beaubouef* did not promptly correct his schedules to cure omissions after their discovery. *Chalik*, *Sicari* and *DeVoll* all involved similarly egregious omissions and misstatements.

The Mitchells, on the other hand, failed initially to disclose some tools, an insurance policy with cash surrender value and a counterclaim. The mistake regarding the insurance policy was corrected by Defendants upon their own discovery of it. Other disclosures (of the suit by Cadle and of Mr. Mitchell's cars and car parts) suggest there was no effort to conceal the tools or counterclaim, and amendment to show the tools was prompt. Further, Mr. Mitchell was open with Cadle's inspector regarding his ownership of the tools. The valuations used by Defendants in their schedules were reasonable and cannot be labeled false statements under oath. Plaintiff's evidence of a pattern of deceit demonstrates no more than a lack of care that does not rise to the

level of the sort of disregard for the truth that could equate to an intent to defraud.

The court is mindful of the need for schedules and statements of affairs to be accurate and complete. *See In re Schmitz*, 224 B.R. 149, 151-52 (Bankr. Mont. 1998); *In re Walters*, 219 B.R. 520, 526 n.10 (Bankr. E.D. Ark. 1988). But the unfortunate reality is that these documents, as initially prepared and filed, typically contain errors and omissions.[16] Application of as strict a standard as Plaintiff proposes as a condition to discharge would far too frequently frustrate Congress's goal of granting the distressed and honest debtor a fresh start. *Cf. In re Stolz*, 2002 U.S. App. LEXIS 26443, *32 (2d Cir. 2002); *Fraser v. Fraser*, 196 B.R. 371 (E.D. Tex. 1996); *In re Mitchell*, 210 B.R. 978, 984 (Bankr. N.D. Tex. 1997). The court finds that Defendants prepared and filed their schedules and statement of financial affairs in good faith. The court further finds that, while Defendants evinced a certain lack of care in completing those documents, their conduct was not fraudulent, not part of a pattern of deceit and not in reckless disregard of the truth.

III. Discussion: Counterclaim

If Defendants' conduct does not prevent their discharge, it also was not blameless. Whatever motives Cadle may have had in filing its complaint, there is sufficient support in the law and facts that it cannot be called frivolous. A debtor seeking relief through bankruptcy assumes an obligation of full disclosure. That many debtors take their responsibility to complete schedules and statement of financial affairs less seriously than they should does not insulate any such debtor from complaints such as the one before the court. Cadle was within its rights to test in

[16] The court's experience with schedules and statements of affairs goes back more than 30 years. It has been rare that the court has seen an initially filed set of schedules that did not suffer from mistakes and omissions.

this case the outer limits of permissible negligence on the part of the Mitchells. If Cadle's case was thin, it was not frivolous.

An overzealous creditor or one seeking a reputation for playing hardball may on proper facts subject itself to serious sanction. The bankruptcy court and the Code were not intended as tools a creditor could use to burnish a fearsome image. However, the laxity demonstrated by the Mitchells in completing documents executed under oath justifies the ordeal Cadle has put them through. Relief should not be granted in the counterclaim.

IV. Conclusion

For the reasons stated above, Judgment shall enter in favor of Defendants on the complaint and in favor of Plaintiff on the counterclaim. Each party shall bear its own costs. Counsel for Defendants shall prepare and submit a final judgment to such effect, providing a copy to Plaintiff's counsel.

Signed this the 24th day of January 2003.

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DENNIS MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE